

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

PALLET COMPANIES, INC.
A SUBSIDIARY OF IFCO SYSTEMS

Employer

and

UNITED FOOD & COMMERCIAL WORKERS
UNION, LOCAL 1360

Petitioner

Case No. 04-RC-093398

**PETITIONER'S BRIEF IN OPPOSITION TO EMPLOYER'S EXCEPTIONS TO THE
ADMINISTRATIVE LAW JUDGE'S REPORT AND RECOMMENDATIONS ON
OBJECTIONS**

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I. INTRODUCTION

On December 20, 2012 a unit comprised of truck drivers, forklift drivers, nailers, and saw room operators employed by Pallet Companies, Inc., a Subsidiary of IFCO Systems ("Employer" or "IFCO") voted in favor of representation by the United Food and Commercial Workers Union Local 1360 ("Union" or "Petitioner"). On December 27, 2012 the Employer filed an Objection to the Election alleging drug distribution affecting the results of the election. Two additional Employer Objections, alleging improper distribution of pallets and threats of violence by union supporters,

were filed on January 3, 2013, beyond the submission deadline (RD-1(h)).¹

On July 31, 2013, Regional Director Dennis P. Walsh (“Regional Director”) ordered a hearing on all three Objections, while specifying the two issues for resolution with respect to the late-filed Objections: whether the alleged pre-election misconduct that formed the basis of the second and third Objections should be considered despite their late submission, and, if so, whether the conduct affected the results of the election (RD-1(h); (Tr. 21). On the basis of the evidence introduced at the hearing the Administrative Law Judge (“ALJ”) found that: a union supporter, Tyrone LaRocca, was not an agent of the union in connection with a private drug transaction and, that the conduct of the transaction did not warrant overturning the results of the election; the Employer failed to meet its burden of proving that threats by union supporters occurred; the Employer failed to meet its burden of proving that pro-Union forklift drivers discriminated against nailers in order to gain support for the union (R.R. at 4, 6, 7). Accordingly, the ALJ concluded that the Employer’s Objections to the Election must be overruled.

The ALJ’s Recommendations should be sustained and the Union certified by the Board.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Procedural Background

IFCO operates a pallet repair facility in Burlington, N.J. The bargaining unit is comprised

1. Citations to Union, Employer and Regional Director Exhibits introduced into evidence before the Administrative Law Judge are referred to as “P____,” “ER____,” and “RD____” respectively. Citations to the hearing transcript are referred to as “Tr.____.” The Administrative Law Judge’s Report and Recommendations on Objections are cited as “R.R. ____.”

of the Employer's truck drivers and production employees, including nailers, saw room operators and forklift drivers. On November 16, 2012 the Union filed a petition to represent employees in the bargaining unit. Pursuant to a Stipulated Election Agreement, an election was held on December 20, 2012. The ballot tally showed 23 votes cast for the Union and 20 votes cast against union representation. On December 27, 2012 the Employer filed a timely Objection to the Election. On January 3, 2013 the Employer filed two additional, but untimely, Objections to the Election.

The Regional Director's Notice of Hearing dated July 31, 2013 (RD – 1(h)), includes the following statement of evidence submitted by IFCO in support of the timely Objection filed on December 27, 2012:

Prior to the election, the union's lead employee-organizer dealt narcotics, including heroin, to other employees on the Employer's property. Some of the employees to whom narcotics were sold were living in a halfway house and working for the Employer as part of a work release program. These employees had no other source to obtain drugs. Two of the halfway house employees, who were residents at the Albert M. Bo ("Bo") Robinson Assessment and Treatment Center, were caught with, or tested positive for, drugs supplied by the employee-organizer and were returned to prison shortly before the election. As a result, these two employees were unable to vote in the election.

The Notice of Hearing includes the following statements of evidence submitted by IFCO in support of the two untimely Objections filed on January 3, 2013:

1. Improper Distribution of Pallets by Union Supporters

The Employer's nailers, who repair pallets, are compensated on a per piece rate for each pallet repaired. In the production process, forklift drivers supply the nailers with the pallets they repair. Prior to the election pro-Union forklift drivers supplied fewer pallets, or pallets that were more difficult to repair, to "pro-company or undecided" nailers, thereby threatening these nailers with lower earnings and coercing them to support the union.

2. Threats of Violence by Union Supporters

On December 18, 2012, an employee gave a speech to other employees in the lunchroom explaining why the employee did not support the union and why employees should not vote for the union in the election. That same day, a union supporter told the employee to “watch his back” and that the employee had been paid by the Employer to make the speech. On the morning of December 19, 2012, another Union supporter told the employee not to let him “catch your ass outside the gate” and threaten to kill the employee. Later that day, the employee found a note on the seat of his truck that read, “watch your back motherfucker.” Id.

The Regional Director sets forth the two issues for resolution with respect to the late-filed Objections:

Based on the evidence, I find that the issues as to whether the additional alleged pre-election misconduct should be considered notwithstanding its late submission, and if so, whether the conduct affected the results of the election, can best be resolved based on record testimony taken at a hearing. whether the alleged pre-election misconduct that formed the basis of the second and third Objections should be considered despite their late submission, and, if so, whether the conduct affected the results of the election. (RD-1(h)).

These two issues were again identified on the record at the hearing. (Tr. 21).

The hearing was held before the ALJ on September 4, 2013. The ALJ issued his decision on September 30, 2013, finding that the Employer had not met its burden of proving that the Union engaged in objectionable conduct, and that the named employee and union supporter was not a general agent of the Union. The ALJ recommended that the Employer’s Objections be overruled and the results of the election certified. (R.R. at 4,6 and 7).

B. Factual Background

1. LaRocca As Union Witness

Tyrone LaRocca (“LaRocca”) was a key union supporter and a focus of all three

Employer Objections. For that reason, the Union arranged to call LaRocca as a witness, and, LaRocca agreed to testify at the September 4, 2012 hearing. The Union's August 16, 2013 letter to the Regional Director in opposition to the Employer's depositions request, confirms the Union's decision to produce LaRocca as a witness, as well as LaRocca's agreement and intention to testify in this case. When LaRocca did not present himself at the hearing, Union Counsel noted in her opening statement that LaRocca "may or may not be here to testify" as it was unclear whether or not he would be able to appear. (Tr. 14). Soon thereafter, the Union was notified that LaRocca passed away. His Certificate of Death and the Union's August 16, 2013 letter to the Regional Director are attached to this Brief as Exhibit A.² In sum, LaRocca was called as a witness, but was unable to appear.

2. LaRocca Was Not A General Agent of the Union

Edward Cecil ("Cecil"), the Union's Assistant Organizing Director and coordinator of its IFCO campaign, testified that five or six "key" union supporters, including LaRocca, communicated with Cecil on a regular basis, obtained signed authorization cards from their co-workers, relayed certain information, attended union meetings, and provided Cecil with information about work issues. (Tr. 136; 138-140; 142-144; 148). While LaRocca was the most active union supporter, no supporter, including LaRocca, had authority to answer questions about the Union, or to talk about contract negotiations or anything that the Union would do as the employees' representative (Tr.136-137;144;147;160).³ Employer witness, Felix Rodriguez ("Rodriguez"),

² The Union moves for the admission of the Certificate of Death and the Union's August 16, 2013 letter to the Regional Director as P-3.

³ Cecil acknowledged that LaRocca had more contact with him than the other key union supporters; Cecil did not request this, rather, it was LaRocca's choice. (Tr. 160).

agreed that the Cecil was the only one who answered questions about the Union, and if employees had questions about the Union, LaRocca would refer them to Cecil (Tr. 77). Employees, Marc Cunningham (“Cunningham”) and Bryant Keith Little (“Little”), testified that the Union never said or did anything that would lead them to believe that LaRocca had the authority to speak for the Union (Tr. 113; 136). If Cunningham had questions about the Union he had Cecil’s number. And, the Union told him that if he or anyone else had union questions, they were to contact Cecil (Tr. 136-137). Little, too, would contact Cecil directly if he had questions about the Union (Tr. 112-113).

While LaRocca, Cunningham and others got their co-workers to sign authorization cards, so did Cecil and Local 1360 organizer Robert Hollinger (“Hollinger”), both before and after the filing of the representation petition. (Tr. 134-136; 158-159). Employer witness Rodriguez witnessed Cecil handing out authorization cards to employees (Tr. 79).

Rodriguez also witnessed Cecil meeting with employees on a number of occasions at the train station, the local WaWa Store and at the Burger King during breaks and after work. Cecil went to Rodriguez’s apartment on one occasion. Rodriguez testified that he had seen Cecil at the train station without LaRocca. (Tr. 79; 81). LaRocca was not present for every meeting Cecil had with employees. (Tr. 145-146).

Cecil and Hollinger were actively and continuously engaged and in direct communication with IFCO employees during the critical period of the campaign. Cecil’s organizing activities consisted of contacting each and every worker to answer questions and to provide them with information about the Union and the campaign. His contacts were made by phone, and by meeting employees in person during lunch breaks and after work, as well as during home call visits. Cecil also held meetings on several dates during the critical period and would regularly meet

employees off-site at the WaWa store, Burger King and the train station. He also met employees in the parking lot across from the IFCO plant. (Tr. 145-146).⁴

The Union had no knowledge of conduct alleged by the Employer in any of its Objections, and would “never” condone such conduct (Tr. 151-154).

3. Private Drug Sale Did Not Constitute Objectionable Conduct

John J. Rios, aka John Egnatowicz (“Rios”), a work release employee from the halfway house, was serving time for felony convictions, including aggravated manslaughter and distributing, manufacturing and dispensing controlled dangerous substances while working at IFCO as a nailer in December, 2012 (ER. 6 at 7; 30-31). Rios had approached LaRocca about obtaining drugs because he believed that LaRocca was a user (ER. 6 at 22-23). There is no evidence in the record as to *when* Rios purchased drugs from LaRocca (R.R. at 1 and 3).

There was no discussion about the Union between Rios and LaRocca during the transaction. LaRocca never told him he owed him anything in connection with the Union. Rios and LaRocca never discussed the Union, because, as Rios said, he was leaving the halfway house and was not going to stay at the job, “. . . so it wasn’t really any of my concern, whether it went union or not....” (ER. 6 at 15, 18, 21; R.R. at 3).

Rios’s work release was terminated because he received a positive drug test. (Tr.98; ER. 6 at 29; R.R. at 3). There was no evidence in the record as to the type of drug Rios tested

⁴ Cecil also attempted to contact the work-release employees who were housed at the Bo Robinson Halfway House (“halfway house”); but representatives of the facility would not permit him to speak to these individuals without authorization from the National Labor Relations Board. Cecil left his business card and other information for the employees with halfway house representatives. He also sent campaign literature to them through the mail. (TR. 147-148). Work release employees were not, like their co-workers, permitted to leave the IFCO facility. (Tr. 98).

positive for. Rios was aware that a condition of his work release was that he could not test positive for drugs (ER. 6 at 29).

Terry Scott ("Scott"), HR Field Operations Manager for IFCO, testified that Rios was the only employee removed from IFCO for testing positive for drugs. (Tr.98; 100-101).⁵

Rios acknowledged that it was common practice for IFCO employees to use drugs while on the job, and that the practice had existed long before the union campaign began. (ER. 6 at 28; R.R. at 3).⁶ Residents of the halfway house also sold and used drugs at the halfway house. (ER. 6 at 28-29).⁷

4. Pallets Were Not Distributed Based on Employees' Union Sympathies

The Employer is in the business of repairing pallets. Its truck drivers pick up stacks of pallets from IFCO customers and deliver them to the Employer's loading dock. A forklift driver removes the stacks from the truck and moves them onto to the loading dock. Each stack may contain both "bad" (damaged) and "good" (relatively undamaged) pallets. (Tr. 91). Other forklift drivers remove the stacks from the loading dock and deliver them to the nailers for repair. Nailers are paid an hourly rate of \$8.00, in addition to which they receive a piece rate of \$.30 for repaired pallets.

⁵ The Employer's untimely Objection filed on January 3, 2013 alleged that two employees were removed from IFCO shortly before the election, and were unable to vote, due to positive drug tests or drug possession. The Employer's evidence shows that only one employee was removed from the work-release program for drug-related reasons. (Tr. 98; 100-101; P-2 at 24-25).

⁶ Cecil had no knowledge of drug dealing at IFCO, though he believed that a number of employees had substance abuse problems, which led him to discuss the Employee Assistance Programs the Union had negotiated into its contracts. He had no knowledge of LaRocca using drugs at the time, though he thought he may have had an addiction problem in the past. (Tr. 153-154).

⁷ This admission by Rios directly contradicts the Employer's assertion in its Objection that LaRocca was Rios's only source of drugs. (RD - 1(b)).

(Tr.48). Pallets that are “bad” take more time to repair than “good” pallets. (Tr. 48). According to Rios, who worked for IFCO as a nailer, it takes anywhere from three to four minutes to repair a pallet depending on its condition. (ER. 6 at 12).

The forklift drivers have no control over whether a stack contains good or bad pallets. (Tr. 91; R.R. at 6). When asked on direct examination who determines whether a nailer gets good or bad pallets, Rios stated, “. . . it’s like rolling the dice, you never know what you’re going to get in a pile.” (ER. 6 at 13-14; R.R. at 7). Kristofer Coltenback (“Coltenback”), another nailer whose deposition was requested by the Employer, explained, “. . . you get some bad ones and some good ones. They’re all mixed together.” (P-2 at 20).

There is no evidence that the forklift drivers get to choose which stacks to transport to the nailer. (R.R. at 6). Coltenback also testified, “They just come off the dock. They just pick stacks up and – as they come in, the trucks. No one determines on what you get. You get what you get.” (P2 at 21). Nor do the forklift drivers control the number of pallets that are available. IFCO’s General Manager, Gary Cooper (“Cooper”), explained the number of pallets ebbs and flows. (Tr. 91).

Cooper, Acting General Manager, Taylor Thomas (“Thomas”), and Assistant General Manager, Edrick Colzie (“Colzie”) had a policy of instructing forklift drivers to give pallets to nailers whose stations were empty. (Tr. 82-83). Colzie in particular was charged with insuring, to the extent possible, that pallets and were distributed fairly. (R.R. at 6). If employees had any questions or concerns about pallet distribution, they were instructed to go to Colzie or Thomas for assistance. (Tr. 90). Managers received a production report for each nailer at the end of the day, signed off by the nailer, which allowed management to monitor the distribution of pallets for the

purpose of tracking each nailer's production. (Tr. 92).

There is substantial evidence in the record, primarily from the Employer's own witnesses, which explains why the nailers were not continuously supplied with pallets - none of which has anything to do with the union campaign. Cooper testified that in mid-November, 2012 the Employer began to remodel the plant, which changed how the pallets were delivered to the nailers. (Tr. 93-95).⁸ Prior to the remodel, the stacks delivered to the nailers contained up to 22 pallets. After the remodel, that number was cut in half, being reduced to no more than 7 to 11 pallets for safety reasons. (Tr. 94-95). The effect of this change was to double the amount of work for the forklift drivers delivering the pallets to the nailers, who now had to make twice as many trips to keep the nailers supplied with pallets. For that reason, the Employer had to assign two floating forklift drivers to back up the others, in an attempt to keep the nailers stocked with pallets. (Tr. 88).

In addition, during the critical period in December, 2012, a second shift was installed at the plant. According to Cooper, the installation of the second shift may also have reduced the number of pallets that were available for day shift nailers to repair. (Tr. 91).

The Employer also held meetings approximately three times a week in December, 2012 for its employees about the union campaign, which had the effect of removing the nailers from their stations. These meetings, lasting anywhere from 45 minutes to an hour, reduced the amount of time the nailers could spend repairing pallets, and thus impacted their earning ability. (Tr. 113-116).

Marc Cunningham ("Cunningham"), a nailer who had worked for IFCO for almost two years until his termination in late August, 2013, testified that the nailers always had complaints about the pallets, but not because of favoritism or any connection to the union campaign. (Tr. 136-

⁸ According to Cooper the remodel was complete by the end of November, 2012. (Tr. 89).

137). Keith Bryant Little (“Little”), who has worked as a forklift driver for IFCO for almost four years, testified that he knew of no forklift drivers who gave bad pallets to nailers in order to get union votes. (Tr. 113-116).

The only witnesses produced by the Employer in support of this claim were two nailers, Sean Varlow (“Varlow”) and Luis Mercado (“Mercado”), who had each worked less than three months at the time of the election in December 2012. (ER 5 at 6). Varlow began working for IFCO in early October, 2012. (Tr. 45). Varlow testified that forklift drivers have a buddy system, and that they give most of the bad pallets to employees they are not “really familiar with” and “...the guys they are familiar with, that they’re buddies with, you know, they give them most of the good pallets. . .”. (Tr. 50; R.R. at 6). After working for about a month, Varlow complained to Acting General Manager Thomas about getting bad pallets. Taylor told him, “You’re the new guy. You’re not going to make your quota anyway. So it doesn’t make sense for you to get the new pallets.” (Tr. 55; R.R. at 6). Ironically, Varlow’s example of unfair pallet distribution involved the other Employer witness, nailer Luis Mercado, who worked next to him. Varlow stated that the reason he knew there was “something going on” was because Mercado had finished 62 pallets and he had only finished 18. (Tr. 71; R.R. at 7). Mercado likewise complained about getting insufficient pallets, and admitted that he and Varlow “thought” they were brought bad pallets because they were pro-company. (ER. 5 at 18-19). Mercado conceded that he was told that the delay in delivering the pallets was caused by the remodel. (ER. 5 at 12-13). Mercado also stated that when he complained to the manager about not getting enough pallets, and the manager pointed out that they were still waiting for a truck to come in; in fact, Mercado then saw the dock was empty and felt satisfied that he was short on pallets because they hadn’t been delivered yet. (ER. 5 at 36). Mercado testified that he did not

approach the Employer on January 3, 2013 to complain about pallet distribution; rather, his statement was solicited by the Employer's Labor Consultant, Lauren Rosenfeld ("Rosenfeld"). (ER. 5 at 22-23; R.R. at 7).

In contrast to Mercado, Varlow had complained about what he perceived to be unfair pallet distribution directly to management as early as late November or early December of 2012, (during the critical period), but management obviously did not act on the complaints, or find them to be meritorious until the election was lost. (Tr. 55-56; R.R. at 6).

By early December, 2012, at least three weeks prior to the election, Varlow had also complained to IFCO management, specifically Thomas and Rosenfeld, that LaRocca had told him, "You work with me, I'll work with you," as a way, Varlow interpreted, to get his support for the Union. (Tr. 56; 57; 60; 61). No action was taken by management in connection with Varlow's complaint. For that reason he again complained to Rosenfeld on January 3, 2013, because, he claimed, the unfair distribution continued. (Tr. 56; 60).⁹ Cecil, who was driving the car when this conversation allegedly took place, has no recollection of LaRocca making this statement (Tr. 151).¹⁰ Employer witnesses Rios and Coltenback, also nailers, testified that no comments such as the one described by Varlow had been made to them by any forklift driver, including LaRocca, during the

⁹ It is noteworthy that Varlow's complaints continued even after LaRocca no longer worked for the Employer. According to Mercado, LaRocca was terminated at least a week prior to January 3, 2013 (ER. 5 at 32).

¹⁰ The Union's Organizing Director, Charles VanArtsdalen ("VanArtsdalen"), was also in the car when LaRocca made the alleged statement to Varlow. However there was no perceived need to call VanArtsdalen as an extra witness, since Varlow had already admitted that he told the Employer in late November/early December about the statement. And as the Employer was aware of the statement a full three weeks prior to the election, there could be no justification for filing the Objection after the deadline, which would preclude it from being heard on the merits.

campaign (ER. 6 at 18; ER. 5 at 22-23).

5. Diamond's Allegation of Threats

Stephen Diamond ("Diamond") was a truck driver for IFCO. (Tr.19).¹¹ Two days before the election Little and other employees had clocked out and were eating lunch in the locker room when Assistant Manager Colzie came to tell them that their coworker, Diamond, had something to say about the Union, and if they liked, they could go to the break room to hear it.¹² (ER. 5 at 25-26). Little was not happy about it, but went into the break room because he felt required to go. The other employees who were in the locker room also went to the break room. (Tr. 117-119). Diamond testified that when he tried to talk about his experiences with the Union, he was shouted down by Rudy Curvy ("Curvy") and Little after ten seconds. (Tr. 19-20; R.R. at 4). Little described the incident differently. He testified that Diamond was "... ranting or ranting and raving about how sick we was for trying to get the Union," and that Diamond told them that he was in the Union before and they didn't give him anything. Little stated that Diamond was "... going at everybody in that room pretty good, letting them have it. He was pretty hot," and was saying, "stuff like you guys are stupid. You guys are crazy. They're not going to do anything for you." (Tr. 119-120). Diamond admitted that he called the employees "stupid" and, said "they are idiots." (Tr. 22). Diamond stated that Little told him that he was getting paid by the company to say this. (Tr. 21-22; R.R. at 4). Diamond testified that Curvy also chimed in saying that, "he's doing this for the company. Don't listen to him." (Tr. 9-10; R.R. at 4).

¹¹ Since the election, Diamond has obtained a job working for IFCO at its Seville, Ohio facility. (Tr. 18).

¹² Certain IFCO employees believed they were not permitted to talk about the Union at all while at work at the workplace, even during breaks and lunch. (ER 5 at 26).

Little testified that he could not believe that Diamond was saying those things because he knew from listening to Diamond on a daily basis that Diamond hated IFCO. He told Diamond “I can’t believe you’re saying this,” and “you hate this place. What made you say this here?” (Tr. 119-120). Little testified that he did not want to hear anymore and left. He stated that up until that time no other employee had said anything to Diamond and that Diamond was still speaking when he left the room. (Tr. 120; R.R. at 6).

Diamond testified that later that day Little told him, “You better watch your back.” (Tr. 23; R.R. at 5). Diamond laughed it off. (Tr. 23). Little denied making the statement. (Tr. 121; R.R. at 6).

Diamond testified that the next morning he was approached by Curvy when Diamond was outside the bathroom by the door leading to the parking lot. Diamond stated that there had to be 20 to 25 employees outside but he had “no clue who was present since it was dark.” Diamond stated that he, Diamond, stood there and confronted Curvy “face to face”. (Tr. 24-25).

According to Diamond, both he and Curvy went back and forth and that the situation escalated. Diamond stated that Curvy told him he shouldn’t have gone up and tried to speak to the guys yesterday, and Diamond countered that it was his right, and that the employees didn’t work for the union before and he did. Diamond stated that it continued to go back and forth in that manner, getting louder and louder. (Tr. 43). Diamond testified that during this heated discussion Curvy threatened that he better not catch him “outside the gate, because you’re a dead motherfucker,” and “If I get you outside of here I’m going to kill you.” Diamond testified that he laughed and told him that they could punch out and go in the street and settle it right then, but that Curvy declined, and told him to watch his back because what he pulled yesterday in the lunch room should never have

happened. (Tr. 24-26; R.R. at 5).

Diamond testified that later that day LaRocca told him that he should not have done what he did in the lunchroom the day before. (Tr. 25-26; R.R. at 5).

Diamond stated that on the same day he found an anonymous note in his work truck that was parked near the dock which said “you’re dead, motherfucker.” Diamond did not save the note. (Tr. 26-27; R.R. at 5).

Diamond acknowledged that there were any number of managers that he could have approached to discuss this with. But he chose not to. Thomas had him daily if everything was okay but he still chose not to report the alleged statements (Tr. 29; 36-37). Diamond stated that he like to handle his own problems, and the didn’t want to see anyone lose their job in this economy. (Tr. 35-36).

Diamond did not report the incident to management until he was solicited to go to the office on January 3rd by Rosenfeld, at which time he gave her a statement. (Tr. 29, 40).

Little was never approached by management about these alleged statements, nor was he disciplined in any way for the alleged conduct. Little testified that Curvy too, was never disciplined as far as he knew, since Curvy worked with Little every day and did not miss any work time. Little did not hear about Diamond’s allegations until some months later from his coworkers, and was shocked when he learned of the claims. No one from management has ever mentioned the allegations to him. (Tr. 122-124).¹³

¹³ Little had no knowledge of the alleged incident between Diamond and Curvy. (Tr. 130). There is no evidence that Curvy ever supported the Union. (Tr. 124, 144; R.R. at 5).

III. ARGUMENT

A. The Administrative Law Judge Properly Declined to Draw Adverse Inferences from the Absent Testimony of LaRocca and VanArtsdalen.

The Employer erroneously claims that the Union “refused” to call LaRocca as a witness despite the fact that he was the individual best able to rebut the employer’s claims, and so argues that if called, LaRocca would have testified against the Union’s interests. (Employer’s Brief in Support of its Objections to the ALJ’s Report and Recommendations on Objections at 11; 13). As noted above, the Union had already asserted, on the record, that LaRocca would testify on behalf of the Union at the September 4, 2013 hearing. (*See* August 16, 2013 letter to the Regional Director attached as Exhibit A). When LaRocca did not appear at the hearing, counsel for the Union reported in her opening statement that LaRocca “may or may not be here to testify” as it was unclear whether he would be able to appear. (Tr. 14). Soon thereafter LaRocca passed away. (Exhibit A). As it is clear from the Union’s August 16th submission, union counsel’s statement on the record, and the Certificate of Death, that the Union had every intention of calling LaRocca as a witness, but that LaRocca was unable to attend, no adverse inference can be drawn under the circumstances.¹⁴

Nor can an adverse inference be drawn from the fact that VanArtsdalen was not called to testify about the statement (“You work with me, I’ll work with you”) that Varlow claims LaRocca made to him while VanArtsdalen was present.¹⁵ The statement at issue was the subject of the Employer’s late-filed Objections. One of the procedural issues to be determined at the hearing was

¹⁴ The ALJ gives independent, and meritorious, reasons for declining to draw an adverse inference from the Union’s failure to call LaRocca as a witness with respect to the Employer’s Objection alleging threats. (R.R. at 5).

¹⁵ Cecil was also present at the time, and testified that he has no recollection of the statement being made. (Tr. 151).

whether this Objection should be considered in light of its untimely filing. (Tr. 21). Board law is clear that it will only consider evidence of misconduct related to untimely objections when the objecting party demonstrates by clear and convincing proof that the evidence is not only newly discovered but was also previously unavailable. *Rhone-Poulenc, Inc.*, 271 NLRB 1008 (1984). Varlow admitted that he informed both Thomas, and the Employer's labor consultant, Rosenfeld, in late November/early December of 2012 about the statement (Tr. 56-57; 60-61; R.R. at 2). As the Employer was aware of the statement a full three weeks *prior* to the election, the Employer failed to prove that evidence of the statement was newly discovered and previously unavailable when it filed its Objection after the deadline. Since the Employer failed to meet its burden with respect to the procedural issue, there was no need to produce further testimony on the merits, and no adverse inference should be drawn.

B. The Administrative Law Judge Properly Concluded that LaRocca was Not a General Agent of the Union.

As noted in the ALJ's Report and Recommendations, based on his dispositions of the Objections on the merits, there was no need to make an agency determination with respect to LaRocca. (R.R. at 4). Nevertheless the ALJ went on to apply proper Board standards and case law in concluding that LaRocca was not a general agent of the Union (R.R. at 4).

The Board applies common law principles of agency to determine whether an employee is an agent during an organizing campaign. *Cooper Industries*, 328 NLRB 145 (1999). An individual can be a party's agent if the individual has either actual or apparent authority to act on behalf of the party. *Cornell Forge Co.*, 339 NLRB 733 (2003).

The burden of proving an agency relationship is on the party asserting it. *Millard*

Processing Services, Inc. 304 NLRB 770, 771 (1991), *enfd.* 2 F. 3d 258 (8th Circ. 1993), *cert. denied* 510 U.S. 1092 (1994). The determination of whether this burden has been met rests on analysis of the facts under common law agency principles:

Actual authority refers to the power of an agent to act on his principle's behalf when that power is created by the principle's manifestation to him. That manifestation may be either expressed or implied. Apparent authority on the other hand, results from a manifestation by a principle to a third party that another is his agent. Under this concept, an individual would be held responsible for actions of his agent when he knows or "should know" that his conduct in relation to the agent is likely to cause third parties to believe that the agent has authority to act for him.

Restatement (Second) of Agency, § 27 (1958).

The Employer provided no evidence that the Union did or said anything to LaRocca which gave him actual authority to act on its behalf. Nor did the Employer demonstrate that LaRocca had apparent authority to act on its behalf; specifically, the Employer provided no evidence of Union statements or conduct that could have given other employees any reason to believe that LaRocca was an agent of the Union.

LaRocca was among several employees who were active Union supporters. These employees solicited their coworkers for signed authorization cards, communicated with Cecil about work issues. (Tr. 143-144). Although LaRocca was the most active supporter in the group, he had no authority to speak or act for the Union.¹⁶ (Tr. 143-144). Ex-employee and Employer witness, Rodriguez gave no evidence to demonstrate that LaRocca was authorized to act for the Union.

¹⁶ While LaRocca was generally in contact with Cecil more than others, that was at LaRocca's and not Cecil's initiative (Tr. 160).

(Tr.76-79). On the contrary, he testified that if he had questions about the Union LaRocca instructed employees to contact Cecil directly (Tr. 77).¹⁷ Employees Cunningham and Little, both testified that LaRocca did not have the authority to act or speak for the Union. (Tr.113; 136-137).

Further, employee members of an in-plant organizing committee are not, simply by virtue of such membership, agents of the Union. *Advance Products Corp.*, 304 NLRB 436 (1991). In-plant organizers are generally found to be agents of the Union only when they serve as the primary conduits for communication between the Union and other employees, or are substantially involved in the election campaign in the absence of Union representatives, *United Builders Supply Co.*, supra at 1365.¹⁸ These conditions clearly do not exist here.

The evidence clearly shows that Union officials Cecil and Hollinger were present and active in this campaign, and that they, not LaRocca, were the primary conduits for communication between the Union and IFCO employees. Cecil and Hollinger met regularly in-person with employees on breaks, lunches, and after work, and these meetings took place regularly in the weeks preceding the election. In addition, Cecil made phone calls to employees, sent them written information through the mail, and visited their homes, all in an effort to provide them with information about the Union, to answer their questions, and to gain their support. When employees had questions they had Cecil's business card and were instructed to call him to get information or to answer union questions. Cecil

¹⁷ LaRocca's alleged statement to Rodriguez that he "might" be the shop steward once the election was over is immaterial. (Tr. 76-77). LaRocca could not make himself an agent of the Union solely by his own statement. See Restatement (Second) Agency § 285 (1958). Nor does Diamond's belief that LaRocca started the campaign make him an agent of the Union. (Tr.31). The Board has long held that pro-union employees do not constitute Union agents merely on the basis of their "vocal and active union support," *United Builders Supply Co.*, 287 NLRB 1364 (1988); *Flex Glass, v. NLRB* 715 f.2d 291, 296 (7th Cir.) (1983).

and Hollinger were also active in getting employees to sign authorization cards. (77; 79; 81;112-113;134-136; 145-146; 158-159 R.R. at 4).¹⁹

The ALJ also correctly declined to find that LaRocca acted as an agent when making a private drug transaction with Rios. (R.R. at 4). Board law requires that the agency relationship be established with regard to the specific conduct that is alleged to be unlawful. *Pan-Oston Co.*, 336 NLRB No. 23, slip op. at 2 (2001). Agency is established if the evidence demonstrates that the union ‘instigated, authorized, solicited, ratified, condoned or adopted’ the statements at issue.” *Battle Creek Health System*, 341 NLRB 119 (2004) citing *Kitchen Fresh, Inc. v. NLRB*, 716 F. 2d 351, 355 (6th Cir. 1983). The Employer produced no evidence that the Union was aware or that it in any way instigated, authorized, solicited, ratified, condoned or adopted the alleged conduct. Cecil merely believed that LaRocca, like other employees at IFCO, may have had a drug dependency problem in the past, and discussed how the Union had attempted to assist employees in other units with similar problems. He had no knowledge whatsoever of any drug transactions, or of any allegations of drug transactions at IFCO. (Tr. 151-154). The ALJ properly overruled the Objection.

C. The Administrative Law Judge Properly Concluded that the Private Drug Transaction, Which Occurred on An Unknown Date, Did Not Constitute Objectionable Misconduct.

The Employer’s single timely Objection, which alleges that LaRocca distributed heavy

¹⁹ The Employer’s application of *Bellagio, LLC*, to this case is misplaced. 359 NLRB No. 128 (2013). The individual found to be a union agent in *Bellagio*, was a non-employee who misled a bargaining unit employee into believing that the Union had authorized him to represent it at an offsite lunch meeting to discuss the union campaign. When the individual continued his uninvited participation, the union did nothing to distance itself from him, leading employees to believe he was an agent. In the instant case, there was no question that Cecil and Hollinger were the exclusive agents of the Union, and that LaRocca’s status was limited to that of a strong union supporter.

narcotics to several employees during the critical period, is not supported by the evidence.²⁰ The ALJ correctly notes that if LaRocca did distribute any drugs, then there is no evidence as to *when* this occurred (R.R. at 3).²¹ More importantly, IFCO's claim that LaRocca distributed narcotics to coerce or influence the outcome of the election is not supported by any evidence at all. This Objection is based solely on the testimony of Rios, which the ALJ credits. (R.R. at 1). However the record shows that it was Rios who approached LaRocca for drugs because he believed LaRocca was a "user," and that no mention of the Union was ever made in connection with the transaction. Rios testified that LaRocca never tried to convince him to support the Union. (ER. 6 at 15,18,21,23; R.R. at 3).²²

Rios testified that the employees' practice of taking drugs on the job at the IFCO plant had gone on long before the Union campaign began. Rios also testified that drugs were sold and used the halfway house where he resided. Therefore the Employer's claim that Rios had was no other source to obtain drugs is contradicted by the evidence. (ER. 6 at 27-29; R.R. at 3).

In sum, there is no evidence to support the allegation that any drug transactions were made by LaRocca during the critical period, much less that they were used to influence the outcome of the election. The ALJ properly overruled the Objection.

²⁰ The record shows that only Rios was removed from IFCO during the critical period due to a positive drug test, not the two employees asserted in its Objection. Coltenback was removed from IFCO prior to the election for failure to fund his savings account which was a prerequisite of remaining in the work release program. (P2 at 25; Tr. 100-101; R.R. at 3).

²¹ There is also no evidence of the type of drug sold to Rios.

²² Coltenback also testified that LaRocca never discussed union issues with him, even though he spoke to him "almost daily." (P2 at 22-23).

D. The Administrative Law Judge Properly Concluded that the Employer Failed to Meet its Burden of Proving that Pro-Union Forklift Drivers Discriminated Against Anti-Union Nailers to Gain Union Support.

Cooper, the chief manager at the plant, testified that fork lift drivers have no control over whether stacks contain good or bad pallets. (Tr. 91; R.R. at 3). There is also no evidence that forklift drivers can be selective as to which pallets are delivered to the nailers. (R.R. at 6). Nailers are monitored at the end of the day to insure the productivity levels are being met. (Tr. 92; R.R. at 3). And managers are present on a daily basis throughout the shift to insure, whenever possible, that nailers have pallets to repair and that they are fairly distributed.. Nailers with complaints have ample opportunity to go to Colzie or Thomas who are charged with addressing any concerns they may have about pallet distribution. (Tr. 82-83,90;R.R at 6). Further, there is ample and repeated evidence in the record which demonstrates that various members of management, as well as the Employer's labor consultant, were available to the employees on a daily basis, either in group or one-to-one meetings, to address such issues during the critical period of the campaign. (Tr. 38-40; 113-114). Varlow testified that he had notified both Thomas and Rosenfeld prior to the election of his complaints in this regard. (Tr. 55-56;60-61; R.R. at 2). It strains credulity to believe that management would not have acted swiftly had they found any evidence of unfair distribution caused by anti-union sentiment.

Cooper also conceded that the second shift established in December of 2012 may have impacted the day shift nailers' ability to be sufficiently supplied with pallets. There is also no dispute that the remodel of the plant had a significant impact on the forklift drivers' ability to supply pallets in the same quantity as prior to the remodel. (Tr. 91; 93-95). Finally, the unrefuted evidence is that nailers were attending company-sponsored meetings about the Union up to three times a week for forty-five minutes to one hour at a time, which had an impact on the nailers' ability to maintain

their piece-rate levels. (Tr. 113-116).

The Employer's evidence regarding this issue fails to establish any objectionable conduct. The two Employer witnesses presented by the Employer in support of this Objection, Varlow and Mercado, had worked for the Employer for less than three months by the date of the election. (Tr. 45; ER 5 at 6). Varlow initially proclaimed that pallets were distributed based on a "buddy system," and that those employees whom the forklift drivers were most familiar with got more and better pallets." (Tr. 50; R.R. at 6). But Varlow also testified that Thomas explained to him, "You're the new guy. You're not going to make your quota anyway. So it doesn't make sense for you to get the new pallets." (Tr. 55). These complaints and explanations have nothing to do with the Union.²³ Varlow also used Mercado as an example to show how pallets were being distributed unfairly, claiming that he was getting all the "trash pallets" while Mercado was getting all the good ones, and that Mercado had finished 62 stacks when he had finished only 18 stacks.(R.R. at 7; Tr. 71). Mercado, like Varlow, had believed he received fewer pallets because he was pro-company, but admits he was told it was due to the remodel, and other operational reasons.(ER 5 at 12-13; 36). Mercado testified that Rosenfeld solicited the statement from him about the distribution of pallets. (ER 5 at 32).

More importantly, the evidence of Varlow and Mercado is contradicted by all other management and employee witnesses. (Tr. 91; 113-116; 136-137; ER. 6 at 13-14; P2 at 20-21) The forklift drivers have no control over whether a stack contains good or bad pallets. (Tr. 91; R.R. at 6,7; ER. 6 at 13-14). There is no evidence that the forklift drivers get to choose which stacks to

²³ Cunningham, a nailer, testified that there were general complaints about pallet distribution that were not associated with the Union. (Tr. 136-137).

transport to the nailer. (R.R. at 6). Coltenback testified, "No one determines on what you get. You get what you get." (P-2 at 21). The forklift drivers do not control the number of pallets that are available. (Tr. 91).

Finally, Varlow's testimony regarding LaRocca's alleged vague ("You work with me and I'll work with you") comment, is uncorroborated. Cecil does not recall LaRocca ever making that statement. By Varlow's own admission the statement contained no mention of the Union, or the election, or the vote. (Tr. 70-71).²⁴ Finally, no such statements were made to any other nailers called to testify by the Employer (ER 6 at 18; P2 at 23-24). The ALJ properly overruled the Objection.

E. The Administrative Law Judge Properly Discredited Diamond's Testimony Regarding Alleged Threats By Union Supporters.

Diamond's testimony was directly contradicted by Little, and uncorroborated, despite the fact that more than 20 witnesses were alleged to have been present in the break room and near the scene of the alleged encounter with Curvy the following day. (Tr.19; 24-25; R.R. at 5). In assessing credibility the ALJ also weighed the many opportunities Diamond had to report the alleged incidents, but chose not to do so - despite the fact that the Employer was soliciting just such information only a daily basis from employees, including Diamond, following the election. (Tr. 84-86; R.R. at 5).²⁵ It is also noteworthy that Diamond was the only employee, of the twenty who voted against the

²⁴ In addition, Cecil considered Varlow a supporter up until the day before the election. Varlow told Cecil that although the Company had asked him to be its election observer that he still supported the Union. (Tr. 148-148). This testimony was not refuted by Varlow. The fact that he was considered a union supporter belies his assertion that he was being treated unfairly due to a pro-company position.

²⁵ Diamond also failed to keep the note he allegedly found in his truck. (Tr. 27).

Union, who claimed have been threatened. Accordingly, having found Little's denial that he threatened Diamond to be credible, and Diamond's testimony incredible, the ALJ properly chose to discredit Diamond's concerning Curvy and LaRocca. (R.R. at 5).

The fact that the Employer never interviewed Little, nor disciplined Little or Curvy in connection with these alleged incidents indicates that the Employer itself must have questioned the validity of Diamond's claims. (Tr. 122-124) . As the ALJ judged there to be no objectionable conduct in connection with this Objection, it was properly overruled. ²⁶

Finding no evidence of objectionable conduct the ALJ was not required to, as the Employer asserts in its Exceptions, "consider the cumulative impact of all Union and third party objectionable conduct on the December 20, 2012 election," or to give "proper weight" to the close nature of the results. (Employer's Brief in Support of its Objections to the ALJ's Report and Recommendations on Objections at 40-41)

IV. CONCLUSION

For all of the foregoing reasons the Board should uphold the Administrative Law Judge's Report and Recommendations on the Objections, and the union should be certified.

Respectfully submitted,

SPEAR WILDERMAN, P.C.

BY:


WENDY CHIERICH, ESQUIRE
ATTORNEYS FOR PETITIONER

²⁶ As the ALJ found no objectionable conduct in this case, it is not necessary to include Petitioner's analysis of third-party pre-election misconduct contained in its Post-Hearing brief as applied to this case, which Petitioner incorporates herein by reference.

EXHIBIT A

STATE OF NEW JERSEY

B0006808951

NEW JERSEY DEPARTMENT OF HEALTH
CERTIFICATE OF DEATHSTATE FILE NUMBER
20130052308

1a. Legal Name of Decedent (First, Middle, Last, Suffix) Tyrone Joseph La Rocca		1b. Also Known As (AKA), if Any (First, Middle, Last, Suffix)		1c. LMB ONLY <input type="checkbox"/>	
2. Sex Male	3. Race Black	4a. Age 49 Years	5. Date of Birth (Mo/Day/Yr) 05/17/1964		
6. Birthplace (City & State, foreign country) Torrance, California		7a. Residence-State New Jersey	7b. County Monmouth	7c. Municipality/City Littleton, New Jersey	7d. Zip Code 07044
7e. Social Security Number 804 Regency Court	7f. Apt. No. 210	7g. Inmate of Prison? No		7h. Inmate of Jail? No	
8a. Ever in US Armed Forces? No	8b. If Yes, Name of Branch No	8c. War Service Dates (From-To) No		8d. War Service Branch No	
9. Domestic Status at Time of Death Single/never married		10. Name of Surviving Spouse/Partner (Name given at birth or on birth certificate)			
11. Father's Name (First, Middle, Last) Joseph Anthony La Rocca					
12. Mother's Name Prior to First Marriage (First, Middle, Last) Crystal Anne Connlin					
13a. Name of Informant Crystal Anne La Rocca		13b. Relationship to Decedent Mother			
14. Mailing Address (Postal and Number, City, State, Zip Code) 804 Regency Court, Littleton, NJ 07044					
14a. Mailing Address	14b. City & State	14c. Zip Code	15. Place of Death (Name of facility, crematory, home) East Ridgewood Cemetery		
16. Locality, City & State/Foreign Country Clifton City, New Jersey		17. Name and Complete Address of Funeral Facility Cremation Society of New Jersey, 370 Conner Avenue, Clifton, NJ 07013			
18. Electronic Signature of Funeral Director James J. Marrocco		19. NJ License Number 2510000000000000		20. Decedent Education High school graduate / GED completed	
21. Decedent of Hispanic Origin? Not Hispanic / Hispanic / Latino		22. Decedent's Race White		23. Occupation of Decedent (Type of work done most of day, even if retired) Owner	
24. Kind of Business/Industry Moving & Storage		25. Name and Address of Last Employer IFCO, 320 Duff Lane, Burlington, NJ			
26. Date Pronounced Dead (Mo/Day/Yr) 08/28/2013		27. Name of Person Pronouncing Death James Pistone			
28. Time Pronounced Dead (24-hr) 1317		29. License Number Medical Examiner		30. Date Signed (Mo/Day/Yr) 08/28/2013	
31. Date of Death (Mo/Day/Yr) 08/28/2013		32. Time of Death (24-hr) 1317		33. Was Medical Examiner Contacted? Yes	
34. Cause of Death (Immediate Cause) Isolated bronchopneumonia with hepatomegaly		35. Underlying Cause of Death (Underlying Cause) Isolated bronchopneumonia with hepatomegaly			
36. Part II - Enter only significant conditions contributing to death but not resulting in underlying cause of death (PART I) History of Hepatitis C		37. Was an Autopsy Performed? No			
38. Date of Injury (Mo/Day/Yr) 08/28/2013		39. Time of Injury (24-hr) 1317		40. Place of Injury (Home, construction site, restaurant) Home	
41. Location of Injury (Number and Street, Zip Code) 804 Regency Court, Littleton, NJ 07044		42. Municipality Littleton		43. County New Jersey	
44. Describe How Injury Occurred Motor vehicle accident		45. If Transportation Injury Yes			
46. Manner of Death Natural		47. Did Decedent Have Diabetes? Unknown		48. If Pregnant, Pregnancy Status Not applicable	
49. Carrier Type Medical Examiner		50. Name, Address, and Zip Code of Coroner Dakisha R. Sheh, M.D., Trenton Sheriff's Office 28 East Piper Ave, West Trenton, NJ 08628			
51. Electronic Signature of Coroner Dakisha R. Sheh		52. License Number 2610000000000000		53. Date Certified (Mo/Day/Yr) 10/02/2013	
54. Electronic Signature of Local Registrar Victoria A. Kaufman		55. License Number 1000000000000000		56. Date Registered (Mo/Day/Yr) 10/02/2013	

DATE ISSUED: **October 02, 2013**ISSUED BY:
Clifton City**Nancy Delgado, Local Registrar**This is to certify that the above is correctly copied
from a record on file in my office.Certified copy not valid unless the raised
Great Seal of the State of New Jersey
or the seal of the issuing municipality
or county, is affixed hereon.Vincent J. Anz
Vincent J. Anz
State Registrar
Office of Vital Statistics and RegistryREG-428
JAN 13

THIS DOCUMENT HAS MULTIPLE SECURITY FEATURES TO DETER FRAUD. VOID IF ALTERED.

THIS DOCUMENT CONTAINS A UNIQUE STATE OF NJ WATERMARK HOLD AT LIGHT TO VERIFY

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August 16, 2013

LEONARD SPEAR
1923 - 2003

LOUIS H. WILDERMAN
1909 - 1993

VIA FACSIMILE (215) 597-7658

Dennis P. Walsh, Regional Director
National Labor Relations Board
Fourth Region
One Independence Mall
615 Chestnut Street - 7th Floor
Philadelphia, PA 19106

Re: Pallet Companies, Inc., a Subsidiary of IFCO Systems N.A., Inc.
Consolidated Cases: 04-CA-095575, 04-CA-099349
Opposition to Application of Respondent To Take Trial Depositions of
John Rios aka John Equatowicz, Kristofer Coltenback, and Luis Mercado

Dear Regional Director Walsh:

Please allow this letter to constitute the Union's opposition to Respondent's August 7, 2013 applications to take the trial depositions of John Rios aka John Equatowicz ("Rios), Kristofer Coltenback ("Coltenback") and Luis Mercado ("Mercado").

There is no dispute that the individuals Respondent seeks to depose are currently not available to testify. There is also no dispute that Section 102.30 of the Board's Rules and Regulations asserts a preference for live testimony. For that reason the Region fully investigated whether the New Jersey Department of Corrections will allow live testimony fed from its facilities in this case. It will not. Consequently, there can be no live testimony taken of these individuals.

Moreover, the Board clearly discourages deposition testimony of unavailable witnesses if there is an anticipation that testimony given at the hearing may conflict with the deposition testimony. NLRB Case Handling Manual (Part One) Unfair Labor Practice Proceedings Sec. 10352.2 (stating that "...where it is anticipated that the testimony of the witness may conflict with the other

evidence or testimony the use of depositions should be discouraged"). In this matter, the Union will present testimony at the hearing that will be in direct conflict with the deposition testimonies sought.

Respondent's application specifically seeks to obtain deposition testimony from two of the three individuals, Rios and Coltenback, as to "the objectionable conduct of lead Union organizer LaRocca." (Respondent Applications for Depositions of Rios and Coltenback, p.(s) 2). This alleged conduct was the exclusive subject of the Objection filed by Respondent on December 27, 2012. Mr. LaRocca, whose alleged conduct is the sole subject of this Objection, will be present at the scheduled hearing and will testify in direct opposition to the purported testimonies of these witnesses, and in denial of the conduct alleged in the Objection.

Respondent also seeks to obtain deposition testimony from a third individual, Mercado, specifically as to "the objectionable conduct of several fork-lift drivers," including, Mr. LaRocca. (Respondent Application for Deposition of Mercado, p. 2). This alleged conduct was the subject of one of two Objections filed beyond the Board's seven day deadline, on January 3, 2013. A determination has not yet been made as to whether the Board will allow this Objection to be heard. Moreover, the Union will also present the testimony of fork-lift drivers employed by Respondent at the time, including LaRocca, in direct opposition to the testimony of this witness, and in denial of the conduct alleged in this Objection.

For the above reasons the Union respectfully requests that Respondent's application for deposition testimony be denied.

Thank you for your consideration.

Sincerely,

SPEAR WILDERMAN, P.C.

A handwritten signature in cursive script, appearing to read "Wendy Chierici".

BY: WENDY CHIERICI, ESQUIRE

cc: Joseph Devine, Esq.

Randy Girer, Esq.

Sam Ferraino, President, UFCW Local 1360

Charles VanArtsdalen, Director of Organizing, UFCW Local 1360

CERTIFICATION OF SERVICE

WENDY CHIERICI, ESQUIRE, hereby certifies that a true and correct copy of the Post Hearing Brief on Behalf of United Food & Commercial Workers Union, Local 1360 has been served this date by e-mail and/or fax to:

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WENDY CHIERICI,
Attorney for UFCW Local 1360

Date: November 12, 2013